

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1164

Introduced by Senator Liu

February 20, 2014

An act to amend Sections 44932, 44934, 44936, 44939, 44940, 44941, and 44944 ~~of~~ *of, and to add Section 44944.2 to*, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1164, as amended, Liu. School employees: discipline: dismissal and suspension.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified reasons, ~~including, among others, knowing membership in the Communist Party.~~ *causes, including, among other causes, immoral or unprofessional conduct. Existing law requires the governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend the employee, together with a written statement of charges, at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law authorizes the governing board of a school district, upon the filing of written charges charging an employee with, among other things, immoral conduct, to immediately suspend an employee from his or her duties and give notice to the employee of his or her suspension, as provided. Existing law provides that 30 days after service of the notice, the employee will be dismissed, unless he or she demands a hearing.*

~~This bill would delete knowing membership in the Communist Party as a reason for which a permanent employee may be dismissed.~~ *provide that the charges may be amended only upon a motion before an*

administrative law judge of the Office of Administrative Hearings, would require that a notice of the governing board's intention to dismiss or suspend the employee, together with written charges filed or formulated, be sufficient to initiate a hearing, as prescribed, and would prohibit the governing board of the school district from being required to file or serve a separate accusation. The bill would revise various procedures for providing notice of dismissal or suspension and would authorize a notice of dismissal or suspension to be given at any time of year, except a notice for a proceeding involving only charges of unsatisfactory performance, which would only be given during the instructional year of the schoolsite where the employee is physically employed. The bill would impose various requirements for the filing of a demand for a hearing and the conduct of hearings by the Office of Administrative Hearings. The bill would additionally authorize the immediate suspension of an employee for unprofessional conduct reasonably related to specified sex offenses, substance abuse offenses, and child endangerment offenses. The bill would authorize an employee placed on immediate suspension to make a motion for immediate reversal of suspension, as provided, and would prohibit a motion for immediate reversal of suspension from having a bearing on the authority of a governing board of a school district to determine the physical placement and assignment of an employee who is suspended or placed on administrative leave during the review of the motion or while dismissal charges are pending. The bill would delete obsolete provisions relating to the dismissal or suspension of a permanent employee based on knowing membership by the employee in the Communist Party.

~~(2) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15 and September 15 in any year. requires in a dismissal or suspension proceeding against a permanent employee, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee's demand for a hearing.~~

~~This bill would instead authorize the governing board of a school district to give the notice at any time of year, except for a notice in a proceeding involving only charges of unsatisfactory performance, which the bill would require to be given during the instructional year of the schoolsite at which the employee is physically employed. require that~~

the hearing be commenced within 6 months from the date of the employee's demand for a hearing, and be completed by a closing of the record within 7 months of the date of the employee's demand for a hearing, except as authorized for good cause by the presiding administrative law judge. The bill would revise various procedures for the conduct of those hearings, including the authority to waive the hearing conducted by a Commission on Professional Competence and instead have the hearing conducted by a single administrative law judge. The bill also would provide that a Commission on Professional Competence shall consist solely of an administrative law judge for charges involving only specified sex offenses, substance offenses, and child endangerment offenses. The bill would require that, in a dismissal or suspension proceeding carried out under the above provisions, except for a hearing involving only charges of specified sex offenses, substance abuse offenses, and child abuse offenses, the parties make specified disclosures in lieu of certain written discovery, as prescribed, and would authorize the parties to obtain discovery by oral deposition. The bill would require the governing board and the state to share equally the expenses of the hearing if the Commission on Professional Competence determines that the employee should be dismissed or suspended.

(3) Existing law ~~prescribes various procedures for the hearing, including, among others, a prohibition against~~ *prohibits* the giving of testimony or the introduction of evidence relating to matters occurring more than 4 years prior to the filing of a notice. Existing law further prohibits any decision relating to the dismissal or suspension of any employee from being made based on charges or evidence of any nature relating to matters occurring more than 4 years prior to the filing of a notice.

This bill would exempt ~~charges of unprofessional conduct involving~~ *allegations of an act reasonably related to* specified sex offenses, substance abuse offenses, and child endangerment offenses from these prohibitions.

(4) Existing law provides that a certificated employee may be charged with a mandatory leave of absence offense for certain specified sex offenses or controlled substance offenses with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols. *Existing law provides that a certificated employee may be charged with an optional leave of absence offense for, among other things, other specified substance offenses with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.* Existing law requires the governing board

of a school district to immediately place a certificated employee on compulsory leave of absence if the employee is charged with a mandatory leave of absence offense.

This bill would additionally authorize a certificated employee to be charged with a mandatory leave of absence offense for murder and attempted murder. *The bill also would delete the exceptions for marijuana, mescaline, peyote, or tetrahydrocannabinols.* Because this would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

(5) This bill would also make conforming and nonsubstantive changes.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 44932 of the Education Code is amended
- 2 to read:
- 3 44932. (a) A permanent employee shall not be dismissed
- 4 except for one or more of the following causes:
- 5 (1) ~~Immoral or unprofessional~~ conduct.
- 6 (2) *Unprofessional conduct.*
- 7 ~~(2)~~
- 8 (3) Commission, aiding, or advocating the commission of acts
- 9 of criminal syndicalism, as prohibited by Chapter 188 of the
- 10 Statutes of 1919, or in any amendment to that chapter.
- 11 ~~(3)~~
- 12 (4) Dishonesty.
- 13 ~~(4)~~
- 14 (5) Unsatisfactory performance.
- 15 ~~(5)~~
- 16 (6) Evident unfitness for service.

1 ~~(6)~~

2 (7) Physical or mental condition unfitting him or her to instruct
3 or associate with children.

4 ~~(7)~~

5 (8) Persistent violation of or refusal to obey the school laws of
6 the state or reasonable regulations prescribed for the government
7 of the public schools by the state board or by the governing board
8 of the school district employing him or her.

9 ~~(8)~~

10 (9) Conviction of a felony or of a crime involving moral
11 turpitude.

12 ~~(9)~~

13 (10) Violation of Section 51530 *of this code* or conduct specified
14 in Section 1028 of the Government Code, added by Chapter 1418
15 of the Statutes of 1947.

16 ~~(10)~~

17 (11) Alcoholism or other drug abuse that makes the employee
18 unfit to instruct or associate with children.

19 (b) The governing board of a school district may suspend
20 without pay for a specific period of time on grounds of
21 unprofessional conduct a permanent certificated employee or, in
22 a school district with an average daily attendance of less than 250
23 pupils, a probationary employee, pursuant to the procedures
24 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,
25 and 44944. This authorization shall not apply to a school district
26 that has adopted a collective bargaining agreement pursuant to
27 subdivision (b) of Section 3543.2 of the Government Code.

28 SEC. 2. *Section 44934 of the Education Code is amended to*
29 *read:*

30 44934. (a) Upon the filing of written charges, duly signed and
31 verified by the person filing them, with the governing board of the
32 school district, or upon a written statement of charges formulated
33 by the governing ~~board~~, *board of the school district*, charging that
34 there exists cause, as specified in Section 44932 or 44933, for the
35 dismissal or suspension of a permanent employee of the *school*
36 *district*, the governing board *of the school district* may, upon
37 majority vote, except as provided in this article if it deems the
38 action necessary, give notice to the permanent employee of its
39 intention to dismiss or suspend him or her at the expiration of 30
40 days from the date of service of the notice, unless the employee

1 demands a hearing as provided in this article. Suspension
2 proceedings may be initiated pursuant to this section only if the
3 governing board *of the school district* has not adopted a collective
4 bargaining agreement pursuant to subdivision (b) of Section 3543.2
5 of the Government Code.

6 ~~Any~~

7 (b) *Any* written statement of charges of unprofessional conduct
8 or unsatisfactory performance shall specify instances of behavior
9 and the acts or omissions constituting the charge so that the teacher
10 will be able to prepare his or her defense. It shall, where applicable,
11 state the statutes and rules ~~which~~ *that* the teacher is alleged to have
12 violated, ~~but~~ *and* it shall also set forth the facts relevant to each
13 occasion of alleged unprofessional conduct or unsatisfactory
14 performance.

15 (c) *If the governing board of the school district has given notice*
16 *to a permanent employee of its intention to dismiss or suspend him*
17 *or her, based upon written charges filed or formulated pursuant*
18 *to this section, the charges may be amended only upon motion*
19 *before an administrative law judge of the Office of Administrative*
20 *Hearings. No motion to amend shall be granted less than 60 days*
21 *before the hearing on the charges if it would extend the close of*
22 *the record beyond the seven-month deadline pursuant to paragraph*
23 *(1) of subdivision (a) of Section 44944 unless the administrative*
24 *law judge determines that the amended charges are substantially*
25 *related to the initial charges that were filed. If a motion to amend*
26 *charges is granted by the administrative law judge, the employee*
27 *shall be given a meaningful opportunity to respond to the amended*
28 *charges.*

29 (d) *A notice of the governing board of the school district to an*
30 *employee of its intention to dismiss or suspend him or her, together*
31 *with written charges filed or formulated pursuant to this section,*
32 *shall be sufficient to initiate a hearing under Section 11503 of the*
33 *Government Code, and the governing board of the school district*
34 *shall not be required to file or serve a separate accusation.*

35 ~~This~~

36 (e) *This* section shall also apply to the suspension of
37 probationary employees in a school district with an average daily
38 attendance of less than 250 pupils ~~which~~ *that* has not adopted a
39 collective bargaining agreement pursuant to subdivision (b) of
40 Section 3542.2 of the Government Code.

1 ~~SEC. 2.~~

2 SEC. 3. Section 44936 of the Education Code is amended to
3 read:

4 44936. (a) The notice of dismissal or suspension in a
5 proceeding initiated pursuant to Section 44934 may be given at
6 any time of year.

7 (b) Notwithstanding subdivision (a), in a proceeding initiated
8 pursuant to Section 44934 involving only charges of unsatisfactory
9 performance, the notice of dismissal or suspension shall only be
10 given during the instructional year of the schoolsite where the
11 employee is physically employed.

12 (c) The notice of dismissal or suspension shall be in writing and
13 be served upon the employee personally or by United States
14 registered mail addressed to the employee at his or her last known
15 address. A copy of the charges filed, containing the information
16 required by Section 11503 of the Government Code, together with
17 a copy of the provisions of this article, shall be attached to the
18 notice.

19 ~~SEC. 3.~~

20 SEC. 4. Section 44939 of the Education Code is amended to
21 read:

22 44939. (a) Upon the filing of written charges, duly signed and
23 verified by the person filing them with the governing board of a
24 school district, or upon a written statement of charges formulated
25 by the governing board of a school district, charging a permanent
26 employee of the district with *unprofessional conduct reasonably*
27 *related to an offense described in Section 44010 or 44011 of this*
28 *code or Sections 11165.2 to 11165.6, inclusive, of the Penal Code,*
29 *immoral conduct, conviction of a felony or of a crime involving*
30 *moral turpitude, with incompetency due to mental disability, or*
31 *with willful refusal to perform regular assignments without*
32 *reasonable cause, as prescribed by reasonable rules and regulations*
33 *of the employing school district, or with violation of Section 51530,*
34 *district, the governing board of the school district may, if it deems*
35 *such that action necessary, immediately suspend the employee*
36 *from his or her duties and give notice to the employee of his or*
37 *her suspension, and that 30 days after service of the notice, the*
38 *employee will be dismissed, unless he or she demands a hearing.*

39 ~~(b) If the permanent employee is suspended upon charges for~~
40 ~~a violation of Section 51530, the employee may within 10~~

1 (b) (1) An employee who has been placed on suspension
2 pursuant to this section may serve and file with the Office of
3 Administrative Hearings a motion for immediate reversal of
4 suspension. Review of a motion filed pursuant to this section shall
5 be limited to a determination as to whether the facts as alleged in
6 the statement of charges, if true, are sufficient to constitute a basis
7 for immediate suspension under this section. The motion shall
8 include a memorandum of points and authorities setting forth law
9 and argument supporting the employee's contention that the
10 statement of charges does not set forth a sufficient basis for
11 immediate suspension.

12 (2) The motion shall be served upon the governing board of the
13 school district and filed with the Office of Administrative Hearings
14 within 30 days after service upon the employee of the initial
15 pleading in the matter. The governing board of the school district
16 shall have the right to serve and file a written response to the
17 motion before or at the time of hearing.

18 (3) The hearing on the motion for immediate reversal of
19 suspension shall be held no later than 15 days after the motion is
20 filed with the Office of Administrative Hearings.

21 (4) The administrative law judge shall, no later than 15 days
22 after service upon him or her of notice of the suspension file with
23 the governing board of the school district a verified denial, the
24 hearing, issue an order denying or granting the motion. The order
25 shall be in writing, and a copy of the charges. In that event the
26 permanent employee who demands a hearing within the 30-day
27 period shall continue to be paid his or her regular salary during
28 the period of suspension and until the entry of the decision of order
29 shall be served by the Office of Administrative Hearings upon the
30 parties. The grant or denial of the motion shall be without prejudice
31 to consideration by the Commission on Professional Competence,
32 if and during the time that the employee furnishes to the school
33 district a suitable bond, or other security acceptable to the
34 governing board of the school district, as a guarantee that the
35 employee will repay to the school district the amount of salary so
36 paid to him or her during the period of suspension in case the
37 decision of the Commission on Professional Competence is that
38 the employee shall be dismissed. If it is determined that the
39 employee may not be dismissed, the governing board of the school
40 district shall reimburse the employee for the cost of the bond. based

1 upon the full evidentiary record before it, of the validity of the
2 grounds for dismissal. The ruling shall not be considered by the
3 commission in determining the validity of the grounds for dismissal,
4 and shall not have any bearing on the commission's determination
5 regarding the grounds for dismissal.

6 (5) An order granting a motion for immediate reversal of
7 suspension shall become effective within five days after service of
8 the order. The school district shall make the employee whole for
9 any lost wages, benefits, and compensation within 14 days after
10 service of an order granting the motion.

11 (6) A motion made pursuant to this section shall be the exclusive
12 means of obtaining interlocutory review of suspension pending
13 dismissal. The grant or denial of the motion shall not be subject
14 to interlocutory judicial review.

15 (c) A motion for immediate reversal of suspension pursuant to
16 this section shall have no bearing on the authority of a governing
17 board of a school district to determine the physical placement and
18 assignment of an employee who is suspended or placed on
19 administrative leave during the review of the motion or while
20 dismissal charges are pending.

21 ~~SEC. 4.~~

22 SEC. 5. Section 44940 of the Education Code is amended to
23 read:

24 44940. (a) For purposes of this section, "charged with a
25 mandatory leave of absence offense" is defined to mean charged
26 by complaint, information, or indictment filed in a court of
27 competent jurisdiction with the commission of any sex offense as
28 defined in Section 44010, with a violation or attempted violation
29 of Section 187 of the Penal Code, or with the commission of any
30 offense involving aiding or abetting the unlawful sale, use, or
31 exchange to minors of controlled substances listed in Schedule I,
32 II, or III, as contained in Sections 11054, 11055, and 11056 of the
33 Health and Safety Code, with the exception of marijuana,
34 mescaline, peyote, or tetrahydrocannabinols. Code.

35 (b) For purposes of this section, "charged with an optional leave
36 of absence offense" is defined to mean a charge by complaint,
37 information, or indictment filed in a court of competent jurisdiction
38 with the commission of any controlled substance offense as defined
39 in Section 44011 or 87011 of this code, or Sections 11357 to 11361,
40 inclusive, Section 11363, 11364, or 11370.1 of the Health and

~~1 Safety Code, insofar as these sections relate to any controlled~~
~~2 substances except marijuana, mescaline, peyote, or~~
~~3 tetrahydrocannabinols. Code.~~

4 (c) For purposes of this section and Section 44940.5, the term
5 “school district” includes county offices of education.

6 (d) (1) If a certificated employee of a school district is charged
7 with a mandatory leave of absence offense, as defined in
8 subdivision (a), upon being informed that a charge has been filed,
9 the governing board of the school district shall immediately place
10 the certificated employee on compulsory leave of absence. The
11 duration of the leave of absence shall be until a time not more than
12 10 days after the date of entry of the judgment in the proceedings.
13 No later than 10 days after receipt of the complaint, information,
14 or indictment described by subdivision (a), the school district shall
15 forward a copy to the Commission on Teacher Credentialing.

16 (2) Upon receiving a copy of a complaint, information, or
17 indictment described in subdivision (a) and forwarded by a school
18 district, the Commission on Teacher Credentialing shall
19 automatically suspend the employee’s teaching or service
20 credential. The duration of the suspension shall be until a time not
21 more than 10 days after the date of entry of the judgment in the
22 proceedings.

23 (e) (1) If a certificated employee of a school district is charged
24 with an optional leave of absence offense as defined in subdivision
25 (b), the governing board of the school district may immediately
26 place the certificated employee on compulsory leave in accordance
27 with the procedure in this section and Section 44940.5. If a
28 certificated employee is charged with an offense deemed to fall
29 into both the mandatory and the optional leave of absence
30 categories, as defined in subdivisions (a) and (b), that offense shall
31 be treated as a mandatory leave of absence offense for purposes
32 of this section. No later than 10 days after receipt of the complaint,
33 information, or indictment described by subdivision (a), the school
34 district shall forward a copy to the Commission on Teacher
35 Credentialing.

36 (2) Upon receiving a copy of a complaint, information, or
37 indictment described in subdivision (a) and forwarded by a school
38 district, the Commission on Teacher Credentialing shall
39 automatically suspend the certificated employee’s teaching or
40 service credential. The duration of the suspension shall be until a

1 time not more than 10 days after the date of entry of the judgment
2 in the proceedings.

3 *SEC. 6. Section 44941 of the Education Code is amended to*
4 *read:*

5 44941. (a) The notice of suspension and intention to ~~dismiss,~~
6 ~~dismiss~~ shall be in writing and ~~be served upon the employee~~
7 ~~personally or by United States registered mail addressed pursuant~~
8 ~~to the employee at his last known address.~~ *Section 44936.* A copy
9 of the charges filed, containing the information required by Section
10 11503 of the Government Code, together with a copy of the
11 provisions of this article, shall be attached to the notice. If the
12 employee does not demand a hearing within the 30-day period, he
13 *or she* may be dismissed upon the expiration of 30 days after
14 service of the notice.

15 (b) *An employee who demands a hearing shall file a single*
16 *document containing his or her request for a hearing pursuant to*
17 *this section and a notice of defense pursuant to Sections 11505*
18 *and 11506 of the Government Code.*

19 ~~SEC. 5. Section 44944 of the Education Code is amended to~~
20 ~~read:~~

21 ~~44944. (a) (1) In a dismissal or suspension proceeding initiated~~
22 ~~pursuant to Section 44934, if a hearing is requested by the~~
23 ~~employee, the hearing shall be commenced within 60 days from~~
24 ~~the date of the employee's demand for a hearing. The hearing shall~~
25 ~~be initiated, conducted, and a decision made in accordance with~~
26 ~~Chapter 5 (commencing with Section 11500) of Part 1 of Division~~
27 ~~3 of Title 2 of the Government Code. However, the hearing date~~
28 ~~shall be established after consultation with the employee and the~~
29 ~~governing board, or their representatives, and the Commission on~~
30 ~~Professional Competence shall have all of the power granted to~~
31 ~~an agency in that chapter, except that the right of discovery of the~~
32 ~~parties shall not be limited to those matters set forth in Section~~
33 ~~11507.6 of the Government Code but shall include the rights and~~
34 ~~duties of any party in a civil action brought in a superior court~~
35 ~~under Title 4 (commencing with Section 2016.010) of Part 4 of~~
36 ~~the Code of Civil Procedure. Notwithstanding any provision to the~~
37 ~~contrary, and except for the taking of oral depositions, no discovery~~
38 ~~shall occur later than 30 calendar days after the employee is served~~
39 ~~with a copy of the accusation pursuant to Section 11505 of the~~
40 ~~Government Code. In all cases, discovery shall be completed prior~~

1 to seven calendar days before the date upon which the hearing
2 commences. If any continuance is granted pursuant to Section
3 11524 of the Government Code, the time limitation for
4 commencement of the hearing as provided in this subdivision shall
5 be extended for a period of time equal to the continuance. However,
6 the extension shall not include that period of time attributable to
7 an unlawful refusal by either party to allow the discovery provided
8 for in this section.

9 (2) If the right of discovery granted under paragraph (1) is
10 denied by either the employee or the governing board, all of the
11 remedies in Chapter 7 (commencing with Section 2023.010) of
12 Title 4 of Part 4 of the Code of Civil Procedure shall be available
13 to the party seeking discovery and the court of proper jurisdiction,
14 to entertain his or her motion, shall be the superior court of the
15 county in which the hearing will be held.

16 (3) The time periods in this section and of Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of Title
18 2 of the Government Code and of Title 4 (commencing with
19 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
20 not be applied so as to deny discovery in a hearing conducted
21 pursuant to this section.

22 (4) The superior court of the county in which the hearing will
23 be held may, upon motion of the party seeking discovery, suspend
24 the hearing so as to comply with the requirement of paragraph (3).

25 (5) (A) A witness shall not be permitted to testify at the hearing
26 except upon oath or affirmation.

27 (B) Testimony shall not be given and evidence shall not be
28 introduced relating to matters that occurred more than four years
29 before the date of the filing of the notice, except for in a hearing
30 that involves an offense defined or described in Section 44010 or
31 44011 of this code, or Sections 11165.2 to 11165.6, inclusive, of
32 the Penal Code.

33 (C) Evidence of records regularly kept by the governing board
34 concerning the employee may be introduced, but no decision
35 relating to the dismissal or suspension of an employee shall be
36 made based on charges or evidence of any nature relating to matters
37 occurring more than four years before the filing of the notice,
38 except for in a hearing that involves an offense defined or described
39 in Section 44010 or 44011 of this code, or Sections 11165.2 to
40 11165.6, inclusive, of the Penal Code.

~~(b) (1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days before the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. If the county board of education is also the governing board of the school district or has by statute been granted the powers of the governing board, the selection shall be made by the Superintendent, who shall be reimbursed by the school district for all costs incident to the selection.~~

~~(2) The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.~~

~~(c) (1) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following:~~

~~(A) That the employee should be dismissed.~~

~~(B) That the employee should be suspended for a specific period of time without pay.~~

~~(C) That the employee should not be dismissed or suspended.~~

~~(2) The decision of the commission that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.~~

~~(3) The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to subparagraph~~

~~(B) of paragraph (1) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.~~

~~(4) The decision of the commission shall be deemed to be the final decision of the governing board.~~

~~(5) The governing board may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.~~

~~(6) The governing board and the employee shall have the right to be represented by counsel.~~

~~(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state, the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed; but shall receive no additional compensation or honorariums for service on the commission.~~

~~(2) If service on a commission occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.~~

~~(e) (1) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney's fees.~~

1 ~~(2) If the commission determines that the employee should not~~
2 ~~be dismissed or suspended, the governing board shall pay the~~
3 ~~expenses of the hearing, including the cost of the administrative~~
4 ~~law judge, any costs incurred under paragraph (2) of subdivision~~
5 ~~(d), the reasonable expenses, as determined by the administrative~~
6 ~~law judge, of the member selected by the governing board and the~~
7 ~~member selected by the employee, including, but not limited to,~~
8 ~~payments or obligations incurred for travel, meals, and lodging,~~
9 ~~the cost of the substitute or substitutes, if any, for the member~~
10 ~~selected by the governing board and the member selected by the~~
11 ~~employee, and reasonable attorney's fees incurred by the employee.~~

12 ~~(3) As used in this section, "reasonable expenses" shall not be~~
13 ~~deemed "compensation" within the meaning of subdivision (d).~~

14 ~~(4) If either the governing board or the employee petitions a~~
15 ~~court of competent jurisdiction for review of the decision of the~~
16 ~~commission, the payment of expenses to members of the~~
17 ~~commission required by this subdivision shall not be stayed.~~

18 ~~(5) (A) If the decision of the commission is finally reversed or~~
19 ~~vacated by a court of competent jurisdiction, either the state, having~~
20 ~~paid the commission members' expenses, shall be entitled to~~
21 ~~reimbursement from the governing board for those expenses, or~~
22 ~~the governing board, having paid the expenses, shall be entitled~~
23 ~~to reimbursement from the state.~~

24 ~~(B) Additionally, either the employee, having paid a portion of~~
25 ~~the expenses of the hearing, including the cost of the administrative~~
26 ~~law judge, shall be entitled to reimbursement from the governing~~
27 ~~board for the expenses, or the governing board having paid its~~
28 ~~portion and the employee's portion of the expenses of the hearing,~~
29 ~~including the cost of the administrative law judge, shall be entitled~~
30 ~~to reimbursement from the employee for that portion of the~~
31 ~~expenses.~~

32 ~~(f) The hearing provided for in this section shall be conducted~~
33 ~~in a place selected by agreement among the members of the~~
34 ~~Commission on Professional Competence. In the absence of~~
35 ~~agreement, the place shall be selected by the administrative law~~
36 ~~judge.~~

37 ~~SEC. 7. Section 44944 of the Education Code is amended to~~
38 ~~read:~~

39 ~~44944. (a) (1) (A) In a dismissal or suspension proceeding~~
40 ~~initiated pursuant to Section 44934, if a hearing is requested by~~

1 the employee, the hearing shall be commenced within ~~60 days~~ *six*
2 *months* from the date of the employee's demand for a hearing. ~~The~~
3 ~~hearing shall be initiated, conducted, and a decision made in~~
4 ~~accordance with Chapter 5 (commencing with Section 11500) of~~
5 ~~Part 1 of Division 3 of Title 2 of the Government Code. However,~~
6 ~~the hearing date shall be established after consultation with the~~
7 ~~employee and the governing board, or their representatives, and~~
8 ~~the Commission on Professional Competence shall have all of the~~
9 ~~power granted to an agency in that chapter, except that the right~~
10 ~~of discovery of the parties shall not be limited to those matters set~~
11 ~~forth in Section 11507.6 of the Government Code but shall include~~
12 ~~the rights and duties of any party in a civil action brought in a~~
13 ~~superior court under Title 4 (commencing with Section 2016.010)~~
14 ~~of Part 4 of the Code of Civil Procedure. Notwithstanding any~~
15 ~~provision to the contrary, and except for the taking of oral~~
16 ~~depositions, no discovery shall occur later than 30 calendar days~~
17 ~~after the employee is served with a copy of the accusation pursuant~~
18 ~~to Section 11505 of the Government Code. In all cases, discovery~~
19 ~~shall be completed prior to seven calendar days before the date~~
20 ~~upon which the hearing commences. If any continuance is granted~~
21 ~~pursuant to Section 11524 of the Government Code, the time~~
22 ~~limitation for commencement of the hearing as provided in this~~
23 ~~subdivision shall be extended for a period of time equal to the~~
24 ~~continuance. However, the extension shall not include that period~~
25 ~~of time attributable to an unlawful refusal by either party to allow~~
26 ~~the discovery provided for in this section. A continuance shall not~~
27 ~~extend the date for the commencement of the hearing more than~~
28 ~~six months from the date of the employee's request for a hearing,~~
29 ~~except for good cause, as determined by the administrative law~~
30 ~~judge. The hearing date shall be established after consultation~~
31 ~~with the employee and the governing board, or their~~
32 ~~representatives, except that, if the parties are not able to reach~~
33 ~~agreement on a date, the Office of Administrative Hearings shall~~
34 ~~unilaterally set a date in compliance with this section. The hearing~~
35 ~~shall be completed by a closing of the record within seven months~~
36 ~~of the date of the employee's demand for a hearing, except where~~
37 ~~reasonable progress has been made in completing the previously~~
38 ~~scheduled days of the hearing within the seven-month period, but~~
39 ~~the hearing cannot be completed, for good cause shown, within~~
40 ~~the seven-month period, as determined by the presiding~~

1 *administrative law judge, or if a continuance has been granted to*
2 *extend the date for the commencement of the hearing. If the*
3 *administrative law judge grants a continuance under this*
4 *subparagraph, he or she shall establish a reasonable timetable*
5 *for the completion of the hearing and the closing of the record.*

6 ~~(2) If the right of discovery granted under paragraph (1) is~~
7 ~~denied by either the employee or the governing board, all of the~~
8 ~~remedies in Chapter 7 (commencing with Section 2023.010) of~~
9 ~~Title 4 of Part 4 of the Code of Civil Procedure shall be available~~
10 ~~to the party seeking discovery and the court of proper jurisdiction,~~
11 ~~to entertain his or her motion, shall be the superior court of the~~
12 ~~county in which the hearing will be held.~~

13 ~~(3) The time periods this section and of Chapter 5 (commencing~~
14 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
15 ~~Government Code and of Title 4 (commencing with Section~~
16 ~~2016.010) of Part 4 of the Code of Civil Procedure shall not be~~
17 ~~applied so as to deny discovery in a hearing conducted pursuant~~
18 ~~to this section.~~

19 ~~(4) The superior court of the county in which the hearing will~~
20 ~~be held may, upon motion of the party seeking discovery, suspend~~
21 ~~the hearing so as to comply with the requirement of the preceding~~
22 ~~paragraph.~~

23 ~~(5) No witness shall be permitted to testify at the hearing except~~
24 ~~upon oath or affirmation. No testimony shall be given or evidence~~
25 ~~introduced relating to matters that occurred more than four years~~
26 ~~prior to the date of the filing of the notice. Evidence~~

27 *(B) The hearing shall be initiated and conducted, and a decision*
28 *made, in accordance with Chapter 5 (commencing with Section*
29 *11500) of Part 1 of Division 3 of Title 2 of the Government Code,*
30 *and a Commission on Professional Competence shall have all of*
31 *the power granted to an agency pursuant to that chapter, except*
32 *as described in this article*

33 *(2) (A) A witness shall not testify at the hearing except upon*
34 *oath or affirmation. No testimony shall be given or evidence*
35 *introduced relating to matters that occurred more than four years*
36 *before the date of the filing of the notice, except for allegations of*
37 *an act reasonably related to an offense described in Section 44010*
38 *of this code, or Sections 11165.2 to 11165.6, inclusive, of the Penal*
39 *Code.*

(B) Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of ~~any~~ an employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years ~~prior to~~ before the filing of the ~~notice~~. notice, except for allegations of an act reasonably related to an offense described in Section 44010 of this code, or Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

~~(b) (1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure~~

(b) (1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence, unless the parties submit a statement in writing to the Office of Administrative Hearings, indicating that both parties waive the right to convene a Commission on Professional Competence and stipulate to having the hearing conducted by a single administrative law judge. If the parties elect to waive a hearing before a Commission on Professional Competence, the hearing shall be initiated and conducted, and a decision made, in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the administrative law judge conducting the hearing shall have all the powers granted to a Commission on Professional Competence pursuant to this article.

(2) Except as provided in paragraph (5), if the parties elect not to waive a hearing before a Commission on Professional Competence, one member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible

1 *for ensuring that the legal rights of the parties are protected at*
2 *the hearing.*

3 *(3) The governing board and the employee shall select the*
4 *Commission on Professional Competence members no later than*
5 *45 days before the date set for the hearing, and shall serve notice*
6 *of their selection upon all other parties and upon the Office of*
7 *Administrative Hearings. Failure to meet this deadline shall*
8 *constitute a waiver of the right to selection, and the county board*
9 *of education or its specific designee shall immediately make the*
10 *selection. If the county board of education is also the governing*
11 *board of the school district or has by statute been granted the*
12 *powers of a governing board, the selection shall be made by the*
13 *Superintendent, who shall be reimbursed by the school district for*
14 *all costs incident to the selection.*

15 ~~(2)~~

16 *(4) (A) The member selected by the governing board and the*
17 *member selected by the employee shall not be related to the*
18 *employee and shall not be employees of the district initiating the*
19 *dismissal or ~~suspension~~ and suspension. Each member shall hold*
20 *a currently valid credential and have at least ~~five~~ three years'*
21 *experience within the past 10 years in the discipline of the*
22 *employee.*

23 *(B) For purposes of this paragraph, the following terms have*
24 *the following meanings:*

25 *(i) For an employee subject to dismissal whose most recent*
26 *teaching assignment is in kindergarten or any of grades 1 to 6,*
27 *inclusive, "discipline" means a teaching assignment in*
28 *kindergarten or any of grades 1 to 6, inclusive.*

29 *(ii) For an employee subject to dismissal whose most recent*
30 *assignment requires an education specialist credential or a services*
31 *credential, "discipline" means an assignment that requires an*
32 *education specialist credential or a services credential,*
33 *respectively.*

34 *(iii) For an employee subject to dismissal whose most recent*
35 *teaching assignment is in any of grades 7 to 12, inclusive,*
36 *"discipline" means a teaching assignment in any of grades 7 to*
37 *12, inclusive, in the same area of study, as that term is used in*
38 *Section 51220, as the most recent teaching assignment of the*
39 *employee subject to dismissal.*

1 (5) *For a hearing that involves only an offense or offenses*
2 *described in Section 44010 or 44011 of this code, or Sections*
3 *11165.2 to 11165.6, inclusive, of the Penal Code, the Commission*
4 *on Professional Competence shall consist solely of an*
5 *administrative law judge.*

6 (c) (1) The decision of the Commission on Professional
7 Competence shall be made by a majority vote, *unless it consists*
8 *solely of an administrative law judge*, and the commission shall
9 prepare a written decision containing findings of fact,
10 determinations of issues, and a disposition that shall be, solely,
11 one of the following:

12 (A) That the employee should be dismissed.

13 (B) That the employee should be suspended for a specific period
14 of time without pay.

15 (C) That the employee should not be dismissed or suspended.

16 (2) The decision of the Commission on Professional Competence
17 that the employee should not be dismissed or suspended shall not
18 be based on nonsubstantive procedural errors committed by the
19 school district or governing board unless the errors are prejudicial
20 errors.

21 (3) ~~The commission~~ *Commission on Professional Competence*
22 shall not have the power to dispose of the charge of dismissal by
23 imposing probation or other alternative sanctions. The imposition
24 of suspension pursuant to subparagraph (B) of paragraph (1) shall
25 be available only in a suspension proceeding authorized pursuant
26 to subdivision (b) of Section 44932 or Section 44933.

27 (4) The decision of the Commission on Professional Competence
28 shall be deemed to be the final decision of the governing board.

29 (5) The *governing* board may adopt from time to time rules and
30 procedures not inconsistent with this section as may be necessary
31 to effectuate this section.

32 (6) The governing board and the employee shall have the right
33 to be represented by counsel.

34 (d) (1) If the member selected by the governing board or the
35 member selected by the employee is employed by any school
36 district in this state, the member shall, during any service on a
37 Commission on Professional Competence, continue to receive
38 salary, fringe benefits, accumulated sick leave, and other leaves
39 and benefits from the district in which the member is employed,

1 but shall ~~not~~ receive ~~no~~ additional compensation or honorariums
2 for service on the commission.

3 (2) *If the member selected is a retired employee, the member*
4 *shall receive pay at the daily substitute teacher rate in the school*
5 *district that is a party to the hearing. Service on a Commission on*
6 *Professional Competence shall not be credited toward retirement*
7 *benefits.*

8 ~~(2)~~

9 (3) If service on a Commission on Professional Competence
10 occurs during summer recess or vacation periods, the member shall
11 receive compensation proportionate to that received during the
12 current or immediately preceding contract period from the
13 member's employing district, whichever amount is greater.

14 (e) (1) If the Commission on Professional Competence
15 determines that the employee should be dismissed or suspended,
16 the governing board and the ~~employee state~~ shall share equally
17 the expenses of the hearing, including the cost of the administrative
18 law judge. The state shall pay any costs incurred under ~~paragraph~~
19 ~~paragraphs~~ (2) and (3) of subdivision (d), the reasonable expenses,
20 as determined by the administrative law judge, of the member
21 selected by the governing board and the member selected by the
22 employee, including, but not limited to, payments or obligations
23 incurred for travel, meals, and lodging, and the cost of the substitute
24 or substitutes, if any, for the member selected by the governing
25 board and the member selected by the employee. The Controller
26 shall pay all claims submitted pursuant to this paragraph from the
27 General Fund, and may prescribe reasonable rules, regulations,
28 and forms for the submission of the claims. The employee and the
29 governing board shall pay their own attorney's fees.

30 (2) If the Commission on Professional Competence determines
31 that the employee should not be dismissed or suspended, the
32 governing board shall pay the expenses of the hearing, including
33 the cost of the administrative law judge, any costs incurred under
34 ~~paragraph~~ ~~paragraphs~~ (2) and (3) of subdivision (d), the reasonable
35 expenses, as determined by the administrative law judge, of the
36 member selected by the governing board and the member selected
37 by the employee, including, but not limited to, payments or
38 obligations incurred for travel, meals, and lodging, the cost of the
39 substitute or substitutes, if any, for the member selected by the

1 governing board and the member selected by the employee, and
2 reasonable attorney's fees incurred by the employee.

3 (3) As used in this section, "reasonable expenses" shall not be
4 deemed "compensation" within the meaning of subdivision (d).

5 (4) If either the governing board or the employee petitions a
6 court of competent jurisdiction for review of the decision of the
7 ~~commission~~, *Commission on Professional Competence*, the
8 payment of expenses to members of the commission required by
9 this subdivision shall not be stayed.

10 (5) ~~(A)~~ If the decision of the ~~commission~~ *Commission on*
11 *Professional Competence* is finally reversed or vacated by a court
12 of competent jurisdiction, either the state, having paid the
13 commission members' expenses, shall be entitled to reimbursement
14 from the governing board for those expenses, or the governing
15 board, having paid the expenses, shall be entitled to reimbursement
16 from the state.

17 ~~(B)~~ Additionally, either the employee, having paid a portion of
18 the expenses of the hearing, including the cost of the administrative
19 law judge, shall be entitled to reimbursement from the governing
20 board for the expenses, or the governing board, having paid its
21 portion and the employee's portion of the expenses of the hearing,
22 including the cost of the administrative law judge, shall be entitled
23 to reimbursement from the employee for that portion of the
24 expenses.

25 (f) The hearing provided for in this section shall be conducted
26 in a place selected by agreement among the members of the
27 ~~commission~~, *Commission on Professional Competence*. In the
28 absence of agreement, the place shall be selected by the
29 administrative law judge.

30 SEC. 8. *Section 44944.2 is added to the Education Code, to*
31 *read:*

32 44944.2. (a) *In a dismissal or suspension proceeding under*
33 *Section 44944, except for a hearing involving only charges of*
34 *unprofessional conduct reasonably related to an offense described*
35 *in Section 44010 or 44011 of this code, or Sections 11165.2 to*
36 *11165.6, inclusive, of the Penal Code, and in lieu of written*
37 *discovery required pursuant to Section 11507.6 of the Government*
38 *Code, the parties shall make disclosures as described in this*
39 *section.*

1 *(1) An initial disclosure shall comply with the following*
2 *requirements:*

3 *(A) A party shall, without awaiting a discovery request, provide*
4 *to the other parties both of the following:*

5 *(i) The name and, if known, the address and telephone number*
6 *of each individual likely to have discoverable information, along*
7 *with the subjects of that information, that the disclosing party may*
8 *use to support its claims or defenses, unless the use would be solely*
9 *for impeachment purposes.*

10 *(ii) A copy of all documents, electronically stored information,*
11 *and tangible items that the disclosing party has in its possession,*
12 *custody, or control and may use to support its claims or defenses,*
13 *unless the use would be solely for impeachment.*

14 *(B) The school district and the employee shall make their initial*
15 *disclosures within 45 days of the date of the employee's demand*
16 *for a hearing.*

17 *(C) A party shall make its initial disclosures based on the*
18 *information then reasonably available to it. A party is not excused*
19 *from making its disclosures because it has not fully investigated*
20 *the case or because it challenges the sufficiency of another party's*
21 *disclosures. A party's failure to make initial disclosures within*
22 *the deadlines set forth in this section shall preclude the party from*
23 *introducing at the hearing any witnesses or evidence not disclosed,*
24 *unless the party shows good cause for its failure to timely disclose.*

25 *(D) A party has an obligation to promptly supplement its initial*
26 *disclosures as new information or evidence becomes known or*
27 *available. Supplemental disclosures shall be made as soon as*
28 *possible, and no later than 60 days before the date of*
29 *commencement of the hearing. A party's failure to make*
30 *supplemental disclosures promptly upon discovery or availability*
31 *of new information or evidence shall preclude the party from*
32 *introducing at the hearing any witnesses or evidence not disclosed,*
33 *unless the party shows good cause for its failure to timely disclose.*

34 *(2) The disclosure of expert testimony shall comply with the*
35 *following requirements:*

36 *(A) A party shall also disclose to the other parties the identities*
37 *of any expert witness whose testimony it may use at the hearing.*

38 *(B) The disclosure specified in subparagraph (A) shall be*
39 *accompanied by a summary of the witness's expected testimony,*
40 *including a description of the facts and data considered by the*

1 witness; a description of the witness's qualifications, including a
2 list of all publications authored in the previous 10 years; a list of
3 all other cases in which, during the previous four years, the witness
4 testified as an expert at a hearing or by deposition; and a statement
5 of the compensation to be paid to the expert witness.

6 (C) Expert witness disclosures shall be made no later than 60
7 days before the date of commencement of the hearing. A party's
8 failure to make full and timely expert witness disclosures shall
9 preclude the party's use of the expert witness's testimony or
10 evidence at the hearing.

11 (3) Prehearing disclosures shall comply with the following
12 requirements:

13 (A) In addition to the disclosures required in paragraphs (1)
14 and (2), a party shall provide to the other parties the following
15 information about the evidence that it may present at the hearing:

16 (i) The name, and if not previously provided, the address and
17 telephone number of each witness, separately identifying those the
18 party expects to present and those it may call if the need arises.

19 (ii) An identification of each exhibit, separately identifying those
20 items the party expects to offer and those it may offer if the need
21 arises.

22 (B) Prehearing disclosures shall be made at least 30 days before
23 the hearing.

24 (i) Within 14 days after prehearing disclosures are made, a
25 party shall file and serve any objections, along with the grounds
26 for each objection, to the admissibility of evidence.

27 (ii) These objections shall be decided on the first day of hearing,
28 or at a prehearing conference conducted pursuant to Section
29 11511.5 of the Government Code. Documents and individuals not
30 timely disclosed without good cause shall be precluded from
31 admission at the hearing.

32 (b) In addition to the disclosures required by subdivision (a),
33 except for a hearing involving only charges of unprofessional
34 conduct reasonably related to an offense described in Section
35 44010 or 44011 of this code, or Sections 11165.2 to 11165.6,
36 inclusive, of the Penal Code, the parties may obtain discovery by
37 oral deposition in California, in accordance with Sections 2025.010
38 to 2025.620, inclusive, of the Code of Civil Procedure, except as
39 described in this article. The school district may take the
40 depositions of the employee and no more than four other witnesses,

1 *and the employee may take depositions of no more than five*
2 *witnesses. Each witness deposition is limited to seven hours.*

3 *(c) If the right to disclosures or oral depositions is denied by*
4 *either the employee or the governing board of the school district,*
5 *the exclusive right of a party seeking an order compelling*
6 *production of discovery shall be pursuant to Section 11507.7 of*
7 *the Government Code. If a party seeks protection from*
8 *unreasonable or oppressive discovery demands, the exclusive right*
9 *of a party seeking an order for protection shall be pursuant to*
10 *Section 11450.30 of the Government Code.*

11 ~~SEC. 6.~~

12 *SEC. 9.* If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.